

# ARTICLE 75

## Table of Contents

	<u>Paragraphs</u>
Text of Article 75	
Introductory Note . . . . .	1 - 3
I. General Survey . . . . .	4 - 9
II. Analytical Summary of Practice . . . . .	10 - 21
The question of the implementation by the Administering Authorities of General Assembly and Trusteeship Council resolutions and recommendations pertaining to Trust Territories . . . . .	10 - 21
1. The question of providing information to the General Assembly on the implementation by the Administering Authorities of General Assembly and Trusteeship Council resolutions and recommendations . . . . .	10 - 13
2. The question of the authority of the United Nations in respect of the implementation of its resolutions and recommendations in trusteeship matters by the Administering Authorities . . . . .	14 - 21



## TEXT OF ARTICLE 75

The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as trust territories.

### INTRODUCTORY NOTE

1. Article 75 requires the United Nations to establish under its authority an International Trusteeship System and also indicates in general terms the functions of the System (administration and supervision) as well as the area of its application (such territories as may be placed thereunder by subsequent individual agreements).
2. Since the provisions governing the application of the Trusteeship System are set out in greater detail in subsequent Articles of Chapters XII and XIII, it has been considered that two questions which arise in connexion with Article 75, and which might also have been dealt with in the present study, could more properly be taken up under the specific Articles to which the questions are closely related. Thus, the interpretation of the clause "as may be placed thereunder" is dealt with in relation to Article 77 in which this clause also appears. Similarly, the actual placing of territories under trusteeship, an action implied in the reference in Article 75 to "such territories as may be placed thereunder by subsequent individual agreements", and the questions to which this action gave rise, are dealt with in this Repertory under Articles 79, 83 and 85.
3. The chief question involved in Article 75 concerns the implementation by the Administering Authorities of General Assembly and Trusteeship Council resolutions and recommendations pertaining to Trust Territories; this is dealt with in the Analytical Summary of Practice of the present study.

### I. GENERAL SURVEY

4. Articles 76 to 91 provide for the application of the International Trusteeship System established under Article 75. Article 75 lays down the general principle that the United Nations shall establish under its authority an International Trusteeship System, the basic objectives and purpose of which are defined in Article 76. Subsequent Articles of Chapters XII and XIII describe principles and methods to be applied in the exercise of the administrative and supervisory functions.
5. At the first part of the first session of the General Assembly, the Powers holding territories under League of Nations Mandate, <sup>1/</sup> with one exception, declared their intention <sup>2/</sup> to place certain Mandated Territories under the International Trusteeship

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<sup>1/</sup> The League of Nations was then still legally in existence. It was dissolved in April 1946.

<sup>2/</sup> This declaration was repeated at the final session of the League of Nations.

System. <sup>3/</sup> The General Assembly took its first step toward establishing that System when it adopted resolution 9 (I), the relevant paragraphs of which read as follows:

"... the General Assembly:

"3. Welcomes the declarations, made by certain States administering territories now held under mandate, of an intention to negotiate trusteeship agreements in respect of some of those territories ...

"4. Invites the States administering territories now held under mandate to undertake practical steps, in concert with the other States directly concerned, for the implementation of Article 79 of the Charter (which provides for the conclusion of agreements on the terms of trusteeship for each territory to be placed under the trusteeship system), in order to submit these agreements for approval, preferably not later than during the second part of the first session of the General Assembly."

6. The subsequent actions of the Mandatory Powers in response to this invitation are dealt with in the studies relating to Articles 77, 79 and 85. The action taken by the Government of the United States in placing the Pacific Islands, formerly under Japanese Mandate, under trusteeship as a strategic area, is treated under Articles 77 and 83. The placing of the former Italian colony of Somaliland under trusteeship is described under Articles 77, 79 and 85. Finally, the actions taken by the United Nations with regard to the placing of South West Africa under trusteeship are treated under Article 77 and, to some extent, also under Article 80. These studies as a whole show how Article 75 has been applied.

7. Article 75 does not elaborate on the term "administration". Article 81 provides for the inclusion in the Trusteeship Agreement of the terms under which a Trust Territory is to be administered, and of the designation of the authority responsible for its administration. The Administering Authority may be one or more States Members or the United Nations itself. Each Trusteeship Agreement contains an article (usually article 2) designating the Administering Authority, and also provides (article 3) that the Administering Authority shall have full powers of legislation, administration and jurisdiction over the Territory, subject to the provisions of the Agreement, and of the Charter. The Administering Authorities may apply to a Territory, subject to any modifications which they may consider desirable, such of their laws as may seem appropriate to local conditions and requirements.

8. The subsequent articles in the Trusteeship Agreements set out in detail the provisions relating to legislation, administration and jurisdiction, and the performance by the United Nations of the functions described in Articles 87 and 88. The scope of an Administering Authority's responsibility under the term "administration" as used in Article 75 is therefore defined in the Trusteeship Agreement itself, the overriding consideration being the achievement of the objectives laid down in Article 76.

9. With respect to the "supervision" provided for in Article 75, the United Nations itself acts in a supervisory capacity through its organs: the General Assembly, the Security Council (for strategic areas) and the Trusteeship Council. Article 87 describes the methods by which the United Nations may carry out its supervisory function under the Trusteeship System: it may consider the annual reports submitted by the Administering Authorities on their administration, provide for periodic visits to the

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<sup>3/</sup> See, for example, G A (I/1), Plen., 11th mtg., United Kingdom, pp. 166 et seqq; 14th mtg., New Zealand, p. 227.

Trust Territories and examine petitions concerning the affairs of the Trust Territories. The General Assembly or the Trusteeship Council, as the case may be, may make recommendations based on these studies to the Administering Authorities with a view to promoting the objectives of the Trusteeship System.

## II. ANALYTICAL SUMMARY OF PRACTICE

The question of the implementation by the Administering Authorities of General Assembly and Trusteeship Council resolutions and recommendations pertaining to Trust Territories

### *1. The question of providing information to the General Assembly on the implementation by the Administering Authorities of General Assembly and Trusteeship Council resolutions and recommendations*

10. In connexion with the securing of information on the implementation by the Administering Authorities of General Assembly and Trusteeship Council recommendations and resolutions, the General Assembly adopted such resolutions as 320 (IV), 322 (IV), 323 (IV) and 324 (IV), by which it recommended to the Trusteeship Council that it should include in its annual reports to the General Assembly information in a special section dealing with the implementation of the recommendations contained in these resolutions. Moreover, considering that it was necessary for both itself and the Trusteeship Council to have at their disposal information on the implementation of the recommendations approved by both bodies in matters relating to Chapters XII and XIII, the General Assembly adopted resolutions 433 (V) and 436 (V). By resolution 433 (V), it recommended that the Trusteeship Council, in its annual reports to the General Assembly, should give in each case in the appropriate section an account of the manner in which the Administering Authority had carried out each recommendation of the General Assembly or of the Trusteeship Council and should also state in the same section its conclusions on the extent of the action taken by the Administering Authority and on the measures which, in its opinion, should be adopted in view of those conclusions.

11. Under resolution 436 (V), it requested the Secretary-General to take the following action:

"(a) To prepare a list, classified by subjects, of such resolutions, including in each case the text of the operative part of the document;

"(b) To report to the sixth session of the General Assembly on the measures taken by the Administering Authorities to implement such resolutions, using as a source the reports of the Trusteeship Council;

"(c) If there has been no action on the part of an Administering Authority in respect of any particular resolution, to set forth the reasons given concerning that matter."

12. At its sixth session the General Assembly, by resolution 560 (VI), took note of the memorandum <sup>4/</sup> of the Secretary-General and observed: (a) that in certain cases effect had not yet been given to all Trusteeship Council and General Assembly recommendations and resolutions applicable to Trust Territories; and (b) that the action thus far taken by the Trusteeship Council did not give effect to the wishes of the General Assembly as expressed under resolution 433 (V), paragraph 1 (d). It

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<sup>4/</sup> A/1903, and Add.1 and Add.2.

therefore expressed the hope that the Administering Authorities which had not yet given effect to all such recommendations and resolutions would implement them as speedily as possible and inform the Trusteeship Council of the steps which had been taken or which it was proposed to take in that respect. It again requested the Trusteeship Council to include in its annual reports to the General Assembly such conclusions as it might deem necessary regarding the action taken by the Administering Authority to implement General Assembly or Trusteeship Council recommendations or resolutions and regarding the measures which, in its opinion should be adopted in view of those conclusions.

13. The Trusteeship Council considered General Assembly resolution 560 (VI), and by its resolution 422 (X), decided to include in each case in the appropriate section of its report to the General Assembly such conclusions as it might deem necessary regarding the action taken by the Administering Authority on the recommendations of the Trusteeship Council and of the General Assembly and regarding measures, which, in its opinion, should be adopted in view of those conclusions. It also instructed its drafting committees on annual reports to take this decision into account in preparing draft reports for the consideration of the Council.

*2. The question of the authority of the United Nations  
in respect of the implementation of its resolutions  
and recommendations in trusteeship matters by the  
Administering Authorities*

14. As indicated above, the General Assembly and the Trusteeship Council carry out their function of supervision under the International Trusteeship System by making recommendations to the Administering Authorities, after examining relevant data, with respect to the attainment of the objectives of the System as set forth in Article 76.

15. On various occasions, 5/ reference has been made to the question whether or not the Administering Authorities were required to implement recommendations made to them by the General Assembly and the Trusteeship Council in their capacity as supervisory bodies under Articles 75 and 85. This question was fully debated, 6/ however, at the fifth session of the General Assembly in connexion with an oral amendment to the preamble of a draft resolution 7/ under consideration, whereby the first paragraph would have read:

"Considering that the Administering Authorities have a clear obligation to implement the recommendations of the General Assembly and the Trusteeship Council in matters relating to Chapters XII and XIII of the Charter;"

16. In opposition to the principle stated in this amendment, the views set forth below were among those expressed. (1) The Administering Authorities were not required automatically to implement resolutions of the General Assembly or the Trusteeship Council. (2) The Administering Authorities considered those resolutions to be mere recommendations and felt bound to accept them only if they judged them to be compatible with the conditions in the Territory concerned and in accordance with the essential aims of the Trusteeship System. (3) The Administering Authorities which in the last resort, were directly responsible for the administration of the Territories under their charge, should be the sole judges of the wisdom of the measures which they were asked to apply. (4) Although in matters affecting the Trust Territories the recommendations of the

5/ See, for example, the debate in connexion with General Assembly resolution 325 (IV) "Use of the flag of the United Nations in Trust Territories" (G A (IV), 4th Com., 96th mtg.; G A (IV), Plen., 239th and 240th mtgs.; T C (VI), 76th mtg.).

6/ G A (V), 4th Com., 156th mtg., paras. 70 and 78; 157th mtg., paras. 15, 34, 35, 40, 41, 46 and 63; 158th mtg., paras. 1-4, 9-11, 12-19 and 30.

7/ G A (V), Annexes, a.i. 13, p. 18, A/C.4/L.79.

General Assembly were, as a general rule, implemented by the Administering Authorities whenever practicable, there was no clearly defined obligation upon the Administering Authorities to carry them out since the General Assembly and the Trusteeship Council could merely make recommendations. (5) Article 87, which gave a more precise definition of the functions of the General Assembly and of the Trusteeship Council, was directly relevant to the amendment under consideration. Article 87 d provided that the General Assembly and, under its authority, the Trusteeship Council might "take these and other actions in conformity with the terms of the trusteeship agreements". The amendment was contrary to Article 87 d and, if adopted, would be difficult to carry out. (6) Each Trusteeship Agreement was a contract between two juridical personalities - the General Assembly and the Administering Authority concerned, and therefore not within the purview of the Fourth Committee. (7) Article 10 authorized the General Assembly to make recommendations on questions or matters within the scope of the Charter and Article 16, which dealt with the functions of the General Assembly in regard to the International Trusteeship System, made it clear that the functions of the Assembly with respect to Trusteeship Agreements did not extend to areas designated as strategic. Since responsibility for those areas was vested in the Security Council, the General Assembly was not the only competent organ in matters of trusteeship.

17. The representative of an Administering Authority stated that his Government recognized its obligation to implement United Nations recommendations and resolutions, but only under certain conditions clearly specified in the Trusteeship Agreement. For example, article 7 of the Trusteeship Agreement for Western Samoa stated that the Administering Authority undertook to apply the provisions of any international conventions and recommendations as drawn up by the United Nations or its specialized agencies which were, in the opinion of the Administering Authority, appropriate to the needs and conditions of the Trust Territory, and conducive to the achievement of the basic objectives of the International Trusteeship System. The amendment proposed made no mention of such conditions.

18. Finally, it was pointed out that the amendment raised the broad question of the relations between the General Assembly and Member States with respect to Assembly resolutions, which affected the work not only of the Fourth Committee, but of all the Main Committees of the General Assembly.

19. In favour of the adoption of the amendment, the views set forth below were among those expressed. (1) The thesis according to which the recommendations of the General Assembly and of the Trusteeship Council were not binding on the Administering Authorities was contrary to Article 75, which placed the International Trusteeship System under the authority of the United Nations; (2) The recommendations of the General Assembly and of the Trusteeship Council could not be considered mere suggestions made to the Administering Authorities, since acceptance of that argument also implied acceptance of the principle that in the last resort authority over the Trust Territories was exercised not by the United Nations but by the Administering Authorities. (3) The latter were fulfilling a mandate entrusted to them by the United Nations, and were therefore required to comply with the recommendations of the body conferring that mandate, namely, the General Assembly. (4) The word "trust" in itself implied the status of an agent responsible to a higher authority, and thus the will of the United Nations prevailed over the will of the Administering Authorities.

20. In reply to the objections which some representatives had raised, the arguments set forth below were among those adduced. (1) Regarding the suggestion that the assertion of the principle set forth in the amendment might present certain legal difficulties since the Security Council also had a responsibility in the matter of Trust Territories, it was said that the amendment made it clear that the strategic areas were not being considered, since it expressly referred to resolutions of the

General Assembly and of the Trusteeship Council and not of the Security Council.

(2) With respect to Article 87 d, the opinion was expressed that the phrase "and other actions" was broad enough to authorize the General Assembly to adopt resolutions concerning matters not expressly enumerated in paragraphs a, b and c of that Article.

(3) It was denied that the proposal could not be carried out by reason of the fact that action by the General Assembly must be within the scope of the Trusteeship Agreements; in stating the obligation of the Administering Authorities to implement General Assembly resolutions in matters relating to Chapters XII and XIII, the amendment set forth a principle which would not exceed the provisions of the Trusteeship Agreements.

(4) Article 10 must be interpreted in direct relation to Article 18 (2). Article 10 dealt with discussion of questions and provided for recommendations to be made to Member States; the draft amendment was a recommendation to the Administering Authorities not as Member States, but as the Administering Authorities of Trust Territories. Article 18 (2), however, enumerated cases in which the General Assembly was to make binding decisions rather than "recommendations". The term "recommendations" was not used in the Article with respect to questions relating to the International Trusteeship System, as it was with respect to matters involving the maintenance of peace and security, on which decisions were admittedly only recommendations; it could therefore be concluded that the resolutions on Trust Territories were binding on the Administering Authority. (5) The words "in the opinion of the Administering Authority" in article 7 of the Trusteeship Agreement for Western Samoa, should be interpreted as applying solely to international conventions and to the recommendations of the specialized agencies, whereas the provisions of Chapters XII and XIII and the provisions of articles 2 and 3 of all the Trusteeship Agreements were categorical with regard to the recommendations of the General Assembly in which specific reference was made to Trust Territories. (6) The argument that the proposed amendment raised the question of the relations between the General Assembly and Member States was not acceptable; the principle embodied therein concerned only the relations between the General Assembly and the Administering Authorities of Trust Territories.

21. The sponsor of the amendment stated that he was prepared to withdraw it, while reserving his right to submit it in due course in the form of a separate draft resolution. His action, however, was not to be construed as meaning that he questioned the validity of the principle set forth in the amendment.